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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 SONOS, INC.,
20 Plaintiff and Counter-defendant,
21 v.
22 GOOGLE LLC,
23 Defendant and Counter-claimant.

Case No. 3:20-cv-06754-WHA
Consolidated with Case No. 3:21-cv-07559-WHA

DECLARATION OF ALAINA KWASIZUR IN SUPPORT OF SONOS, INC.'S PROFFER OF TESTIMONY

Complaint Filed: September 28, 2020

26 **FILED UNDER SEAL**
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1 I, Alaina Kwasizur, declare as follows and would so testify under oath if called upon to do
 2 so:

3 1. I am an attorney and member in good standing of the Bar of the State of
 4 California. I am the General Counsel (Americas and Pacific) at Sonos, Inc. (“Sonos”), and I have
 5 worked at Sonos since 2013. I make this declaration based on my personal knowledge, unless
 6 otherwise noted. If called and permitted to testify by the Court, I can and will testify competently
 7 to the matters set forth herein.

8 2. I make this declaration in support of Sonos’s Proffer of Testimony concerning
 9 Google’s pre-suit knowledge of the patents at issue in this case, which are U.S. Patent No.
 10 10,469,966 (“the ’966 patent”) and U.S. Patent No. 10,848,885 (“the ’885 patent”), which I may
 11 collectively refer to as “the zone scene patents.”

12 3. I advise Sonos on all kinds of legal issues. As relevant to this case I work on many
 13 of our strategic partnerships. I negotiate strategic partnership agreements, technology licenses,
 14 distribution agreements, and IP licenses.

15 4. Prior to this litigation, Sonos and Google had several meetings concerning
 16 Google’s infringement of Sonos’s patents. We first approached Google almost as soon as their
 17 initial competing products came onto the market back in 2016. As I will explain, I was a key
 18 member of the Sonos team involved in those communications with Google.

19 5. Attached as **Exhibit 1** is TX6637, which is a true and correct copy of an email
 20 between Sonos and Google personnel. This is an early email that our legal team sent to Google in
 21 September 2016 summarizing a meeting that was held in August 2016 and attaching a document
 22 summarizing a number of Sonos patents that we identified as being relevant to Google’s
 23 competing products. The people listed in the email fields from Sonos include Mark Triplett, a
 24 Sonos lawyer who heads up the Sonos IP department; Tom Cullen, who was VP of strategy and
 25 one of the founders of Sonos; Craig Shelburne, who was our general counsel at the time; and
 26 myself. On the Google side are John LaBarre and Allen Lo, who were Google in-house
 27 attorneys.

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1 6. In the email, Mr. Triplett specifically notes that 16 patents are directly relevant to
 2 Google at the time. He also explains that there are 8 other patent specifications that the Google
 3 folks should review. He notes that “we seek to reach a licensing agreement with Google for the
 4 Sonos portfolio of utility patents.” Mr. Triplett also explains that “[w]e keep the patent families
 5 alive to ensure over time that we accurately and precisely protect all the patentable innovations
 6 brought to this world by Sonos.”

7 7. A patent family is a group of patents that share a patent specification and claim
 8 priority to one another. Typically, a patent applicant will file an initial patent application with a
 9 patent specification and a set of claims. Then the patent applicant can file a second patent
 10 application with the exact same specification but change the claims at the end in order to protect a
 11 different aspect of the invention. In this way, a patentee can protect different aspects of a product
 12 feature. And, as a patentee’s products evolve over time, they can file continuation applications to
 13 cover the product evolution. The initial patent can be said to be the “grandparent” application,
 14 the next patent in the chain can be said to be the parent application, and the subsequent
 15 applications can be said to be the child applications.

16 8. Attached as **Exhibit 2** is TX6638, which is a true and correct copy of the
 17 attachment to the email from Exhibit 1. This attachment lists 16 issued Sonos patents that are
 18 relevant to Google’s competing products. This also lists 4 allowed but not yet issued patents, as
 19 of the time of that email. And this lists 8 additional patent disclosures that we identified as
 20 relevant to Google. Line 5 of the additional patent disclosures shows Sonos’s Patent No.
 21 8,483,853 (“the ’853 patent”). This is the first non-provisional filed in the zone patent family at
 22 issue in this case. It is the ultimate parent patent to the zone scene patents at issue in this case and
 23 shares a substantively identical specification to the zone patents at issue in this case.

24 9. Attached as **Exhibit 3** is TX6667, which is a true and correct copy of Sonos’s
 25 Patent No. 8,483,853. This is the same zone scene patent we disclosed to Google in 2016. This
 26 patent was filed on Sept. 11, 2007 by Sonos and names inventor Robert Lambourne. The abstract
 27 reads “[a]ccording to one aspect of the present invention, a mechanism is provided to allow a user

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1 to group some of the players according to a theme or scene, where each of the players is located
 2 in a zone. When the scene is activated, the players in the scene react in a synchronized manner.”

3 10. Attached as **Exhibit 4** is TX0001, which is a true and correct copy of Sonos’s ’966
 4 patent, which is one of the patents at issue in this case. For the avoidance of doubt, the cover
 5 page lists the related applications (which is continued on to the second page). And at the bottom
 6 of the list we see the 8,483,853 patent, which confirms that the ’853 patent is the great-
 7 grandparent patent to the ’966 patent.

8 11. I previously noted Mr. Triplett explained to Google that “[w]e keep the patent
 9 families alive to ensure over time that we accurately and precisely protect all the patentable
 10 innovations brought to this world by Sonos.” When Mr. Triplett explains that Sonos keeps the
 11 patent families alive, this means that Sonos typically files additional child applications based on
 12 their existing patent applications and therefore Google should understand that additional patents
 13 in each family will be filed and should be on the lookout for them.

14 12. Attached as **Exhibit 5** is TX6635, which is a true and correct copy of an email Mr.
 15 Triplett sent to Google in October 2016 leading up to an October 25, 2016 in-person meeting
 16 between Sonos and Google. I am listed on the cc: line. In this email, Mr. Triplett attaches a
 17 presentation highlighting some more Sonos patents.

18 13. Attached as **Exhibit 6** is TX6636, which is a true and correct copy of the
 19 attachment to TX6635. On page 3 of the attachment, we identified a number of Sonos patents
 20 and the relevant Google products. And in the final box, on page 4, we identified the ’853 patent
 21 again and noted it was relevant to zone scenes functionality. Page 32 of TX6636 shows that we
 22 highlighted the ’853 patent again.

23 14. Attached as **Exhibit 7** is TX6663, which is a true and correct copy of a
 24 presentation that Sonos delivered to Google in October 2016. Slide 4 shows the size of Sonos’s
 25 patent portfolio at the time, which was growing significantly every year. At the meeting and
 26 through this presentation, we discussed with Google that Sonos had about 230 issued or allowed
 27 U.S. patents and were projected to have about 600 U.S. patents in the next two years. Slide 12
 28 shows another example informing Google of the relevance of the zone scene patent family. At

1 the meeting and through the presentation, we highlight U.S. Pat. No. 8,843,228 (“the ’228
 2 patent”), which is the child application to the ’853 patent and the great-grandparent to the ’966
 3 and ’885 patents. In other words, the ’228 patent is another zone scene patent in the same family
 4 that Sonos disclosed to Google beginning in 2016.

5 15. Attached as **Exhibit 8** is TX6668, which is a true and correct copy of Sonos’s ’228
 6 patent. Looking back at Exhibit 4—Sonos’s ’966 patent—the ’228 patent is referenced in the
 7 related applications section.

8 16. At the time of the meeting at which we presented Exhibit 7, Google had released
 9 what was called a Chromecast Audio dongle and the Google Cast application, which was later
 10 renamed the Google Home application. The audio dongle could plug into external speakers to
 11 output sound and then you could group the audio dongles together with the Google Cast
 12 application to play back music in synchrony. At the time of the meeting, Google had already
 13 announced that it was releasing the Google Home speaker product, which was an “all-in-one”
 14 speaker product that would directly compete with Sonos. By “all-in-one” I mean that the speaker
 15 product had built-in speakers and did not need to plug into any external speakers. At the meeting
 16 Sonos told Google that this Google Home product would also infringe Sonos’s patents, in hopes
 17 that we could reach a license agreement before Google started selling these new products. Sonos
 18 disclosed additional patent families in the meeting that were also relevant to Google.

19 17. Attached as **Exhibit 9** is TX6640, which is a true and correct copy of a
 20 presentation that Sonos gave to Google in January 2018. By 2018, Google had significantly
 21 expanded its multiroom audio product offerings. For instance, by this point, Google had recently
 22 released multiple new products, including the Home, the Home Mini, and the Home Max. Slide
 23 10 of Exhibit 9 shows the Google product offering at that time. At this meeting and through the
 24 presentation, Sonos explained to Google that we believed that Google infringed at least 50 Sonos
 25 patents. For example, Sonos explained why numerous Sonos patents were relevant to the Google
 26 Home Max specifically, as well as to the entire Google Home ecosystem more broadly. Slide 8
 27 shows an update on the state of Sonos’s patent portfolio. By this point we had 450 issued or
 28 allowed patents. And at the meeting and through the presentation, we identified the IEEE Patent

1 Power rankings showing that IEEE ranked Sonos's portfolio second only to Apple's in the
 2 Electronics category. Slide 13 also shows some Sonos patents we selected for discussion with
 3 Google. Under the "group management" heading we identified the '228 patent again. Slides 27
 4 through 29 provide an explanation of how Google's products practiced this '228 zone scene
 5 patent. This explained that the ability to create zone scenes (slide 28) and then invoke those zone
 6 scenes using Google's app (slide 29) practiced this '228 patent and was relevant to the overall
 7 zone scene family.

8 18. Attached as **Exhibit 10** is TX6129, which is a true and correct copy of a letter Mr.
 9 Triplet sent to Google in February 2019. In this letter at page 2, Mr. Triplet explains that
 10 Google has underestimated the number of Sonos patents that it infringes at 43. He explains that
 11 after continued review of Google's products and Sonos's growing portfolio that Sonos has
 12 determined that Google infringes no less than 100 patents at this point. As we can see a few
 13 paragraphs above, he provides a link to 100 claim charts that Sonos prepared illustrating Google's
 14 infringement of 100 Sonos patents. Mr. Triplet concludes that letter by writing that "[w]e would
 15 like to come to an understanding on a path towards completion of a patent licensing agreement
 16 We would ask that Google review Sonos's detailed infringement claim charts, provide
 17 substantive feedback on Sonos's licensing model, and consider the above feedback on Google's
 18 model."

19 19. Attached as **Exhibit 11** is TX6065, which is a true and correct copy of a claim
 20 chart for the '228 patent and shows how Google infringes the '228 patent. This was one of the
 21 100 claim charts referenced and made available for download via Mr. Triplet's letter. A patent
 22 claim is on the left hand side and a description of Google's products are on the right hand side.
 23 The claim chart accuses Google of infringement of the '228 patent via smartphones, tablets, and
 24 computers installed with the Google Home app, the Google Play Music app, and/or other
 25 Chromecast-enabled apps.

26 20. Attached as **Exhibit 12** is TX6658, which is a true and correct copy of an email
 27 that I sent to Google in June 2019. In this email I attach another presentation we gave to Google.
 28

1 21. Attached as **Exhibit 13** is TX6660, which is a true and correct copy of that
 2 presentation that we gave to Google in June 2019 and that I attached to my email, Exhibit 12.
 3 Slide 3 of Exhibit 13 shows a summary of the discussions to-date between Google and Sonos
 4 concerning patent licensing notated with Google's release of infringing products. It summarizes
 5 many of the discrete events along the way in the testimony that I would give if permitted. By
 6 way of example, the Chromecast audio dongle with multiroom support was released in December
 7 2015; this is where Google's infringement began. Then Sonos had two meetings with Google
 8 where we identified to Google 28 Sonos patents by October 2016. Google then accelerated its
 9 infringement by releasing the Google Home in 2016, and then the Google Home Mini and the
 10 Google Home Max in 2017. Following this, we had some additional meetings in 2018, where we
 11 brought the total number of Sonos patents identified to Google to 53. Google then released the
 12 Google Home Hub, which was a display device that also infringed. Finally, in February 2019, as
 13 we just discussed, we sent Google a letter identifying Google's infringement of 100 Sonos patents
 14 including by way of 100 claim charts. The blue line shows the number of Sonos patents we
 15 identified to Google over time. To summarize, first, 28, then 40, then 53, then 100. Slide 15 is
 16 bringing to Google's attention once again that it infringes patents from the zone scene family.
 17 And this presentation also brought the '228 patent to Google's attention specifically. Slide 17
 18 shows the '228 patent identified alongside the Google products.

19 22. After the June 2019 presentation, Google continued to infringe by releasing more
 20 multiroom products, including the Nest Hub and the Nest Audio.

21 23. Attached as **Exhibit 14** is TX6641, which is a true and correct copy of an email
 22 that I sent to Google in January 2020. I write that "We have been patiently and in good faith
 23 trying for years to resolve Google's infringement of Sonos's intellectual property. Despite
 24 Sonos's openness and willingness to further engage, our discussions have never meaningfully
 25 progressed. Over this extended time, Google has only increased the scope of its infringement.
 26 We are now going to seek resolution through the courts."

27 24. Attached as **Exhibit 15** is TX6130, which is a true and correct copy of an email
 28 that I sent to Google in September 2020 concerning this case. I write: "As you know, Sonos

1 spent years trying patiently and in good faith to resolve Google's infringement of Sonos's
 2 intellectual property. Despite Sonos's efforts, our discussions have never meaningfully
 3 progressed. Even since we filed in the ITC, Google has increased the scope of its infringement
 4 and brought a multiplicity of retaliatory lawsuits in countries around the world. These lawsuits
 5 will not have their intended effect. Attached please find a courtesy copy of the complaint that we
 6 will file Tuesday, September 29th in the United States District Court. In this lawsuit, Sonos will
 7 focus on Google's infringement of U.S. Patent[] . . . 10,469,966 . . . although, as we have
 8 discussed, Google infringes many more of Sonos's patents."

9 25. Attached as **Exhibit 16** is TX6136, which is a true and accurate copy of a draft
 10 patent infringement complaint that I attached to Exhibit 15. This draft complaint sets forth
 11 Sonos's allegations of infringement concerning the '966 patent.

12 26. I am aware of Google's contention in this case concerning when it became aware
 13 of the '966 patent. Google contends that it became aware of the '966 patent on September 28,
 14 2020, which was the day I emailed them and told them we were going to file a lawsuit on the '966
 15 patent. Attached as **Exhibit 17** is TX2335, which is a true and correct copy of an interrogatory
 16 response served by Google in this case.

17 27. We have been identifying zone scene patents to Google since 2016. This included
 18 the '228 patent and the '853 patent. We also told Google that we keep patent families alive. This
 19 put Google on notice to check and see when the Patent Office issued new patents to Sonos,
 20 particularly in the zone scene family. Thus, the only way Google would not have known about
 21 the '966 patent earlier was if it purposefully didn't check for these new patents. Had Google
 22 checked, it would have found the '966 patent as early as its issue date, which was November 5,
 23 2019.

24 28. Moreover, the inventions claimed in the '966 patent (and the '885 patent) are
 25 described in the original zone scenes specifications. Google therefore knew that Sonos could
 26 claim that technology, and Google also knew that Sonos intended to continue securing patents
 27 based on the zone scenes specification.

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1 29. I understand that the Court granted Google's motion for summary judgment of no
2 willful or indirect infringement of the '885 patent. Dkt. 566. As a result of that ruling, I
3 understand that I will not be permitted to testify regarding Google's knowledge of its
4 infringement of the '885 patent for purposes of willfulness or indirect infringement. But for the
5 Court's ruling, I would have testified that for all of the same reasons described above, the only
6 way Google would not have known about the '885 patent earlier was if it purposefully didn't
7 check for these new patents. Had Google checked, it would have found the '885 patent as early
8 as its issue date, which was November 24, 2020, and also would have realized it infringed the
9 '885 patent. And as I described previously, I understand Google's contention in this case to be
10 that it did not become aware of the '966 patent until September 28, 2020 (the day I emailed them
11 and told them we were going to file a lawsuit on the '966 patent). But for the Court's ruling at
12 Dkt. 566, I would have testified that even assuming Google was not aware of the '966 patent until
13 September 28, 2020, Google's knowledge of the '966 patent should have put Google on notice of
14 the '885 patent as of the '885 patent's issue date (November 24, 2020). Again—and specifically
15 in light of Google's admitted knowledge of the '966 patent as of September 28, 2020—the only
16 way Google would not have known about the '885 patent was if it purposefully didn't check for
17 these new patents. Had Google checked, it would have found the '885 patent as early as its issue
18 date, which was November 24, 2020.

19

20 I declare under penalty of perjury under the laws of the United States of America that the
21 foregoing is true and correct to the best of my knowledge. Executed this 10th day of May, 2023
22 in San Francisco, California.

23



24 Alaina Kwasizur

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